

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00231/16

Reserved on: 15.07.2019
Date of Order: 17.07.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Atul Kumar Singh, aged about 46 years, Son of Late Thakur Shiv Dayal Singh, resident of Vill+PO- Madhupur, Via- Bidpur, District- Vaishali, presently residing at Sanjay Nagar, Road No. 3, Near Indira Nagar, Patna- 800001.

.... Applicant.

By Advocate: - Mr. N.N. Singh

-Versus-

1. The Union of India through the Secretary, Deptt. Of Posts, Dak Bhawan, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. Director Postal Services (H.Q.), Patna-800001.
4. Sr. Supdt. Posts Gaya Division, Gaya.
5. Dy. Chief Postmaster (Admins), Patna GPO.

.... Respondents.

By Advocate: - Mrs. P.R. Laxmi

O R D E R

Per Dinesh Sharma, A.M.:- The case of the applicant is that he has been removed from the post of Postal Assistant by the order of the Dy. CPM (Admn.) dated 23.04.2015 following a charge sheet dated 13.01.2009 and inquiry report dated 22.07.2014. According to the applicant, the charge against him, of producing a false mark sheet for ISC examination showing his marks as 777 while he actually obtained only 472 marks, is totally wrong and it was not proved during the enquiry. The applicant was not given

sufficient opportunity to defend himself nor the relevant witnesses or documents were produced. This enquiry also goes against the finding of the CBI which had investigated this case and came to a conclusion that there was no sufficient evidence to prosecute him on this charge. The applicant has also alleged that the order issued by the Dy. CPM is in violation of Rule 14 (3) of CCS(CCA) Rules, 1965 and is non-est in the eyes of law as held by the Hon'ble Supreme Court {[in the case of **UOI & Ors. Vs. B.V. Gopinathan & Ors.** [AISLJ 2014(1) 01/ (2014) 1 SCC 01]} since it has been issued by an authority subordinate (PSS Gr. 'B' Officer) to the officer who had appointed him (SSP, Gaya, a Group 'A' Officer).

2. The respondents have filed their written statement denying the claims made by the applicant. According to them, the applicant obtained the appointment on the basis of marks which he allegedly secured in the Intermediate Examination. When the respondents approached the concerned college (A.N. College) it was found that he had obtained much lesser marks (472 instead of 777) securing 2nd Division). The applicant has been issued charge memo under the Rules and was given sufficient opportunity to defend himself in the enquiry which was conducted following all rules of natural justice.

3. The applicant has filed a rejoinder in which he has reiterated his claim about the disciplinary action being violative of Article 311(1) of the Constitution of India. He also stated about non production of TR (Tabulation Register) during the inquiry, on the basis of which the Principal would have intimated the fact of his having secured lesser marks. He reiterated that the

CBI failed to investigate and prove the genuineness of the marksheet for want of tabulation register and did not proceed with criminal action against the applicant due to lack of such evidence.

4. We have gone through the pleadings and heard the learned advocates of both the parties. The contentions of the applicant can be mainly summed up into two arguments: -

(i) The whole process of enquiry and punishment is void ab initio since the charge sheet and the imposition of punishment has been done by an officer who is below the rank of the officer who appointed him.

(ii) The enquiry has failed to establish his guilt about producing bogus marksheet through reliable documents and witnesses.

5. The first issue, being the more fundamental one, requires to be dealt first. The applicant had first raised this issue in his appeal before the Appellate Authority who rejected this contention by saying that the appointing authority, though holding ad-hoc office as Senior Superintendent of Post Offices, was a Group 'B' Officer and therefore the disciplinary action and the punishment imposed on the applicant is not by an officer below the rank of the officer who appointed him.

6. We have gone through the concerned CCS(CCA) Rules. The appointing authority and the disciplinary authority for all punishments for a Group C officer is the Head of the Office (for all such officers other than those

appointed in the Secretariat or where it is specifically stated as different from Head of Office). In the present case, the applicant was appointed by the then Head of Office who was a Group 'B' officer. This is not denied by the applicant. He is claiming to have been appointed by an officer belonging to Group 'A' only because the SSPO office is generally held by an officer belonging to Group A category. Under Article 311(1) of the Constitution of India and also under the provisions of the CCS(CCA) Rules, the protection is against removal or dismissal by an authority who is lower than the appointing authority or the authority who appointed a person (whichever is the highest). The case of the applicant does not attract these provisions since both the disciplinary and the appointing authority happened to belong to the same grade (Group 'B'). We are, therefore, convinced that no violation of the provisions of Constitution of India or of the concerned statute happened in this case so as to vitiate the enquiry ab initio.

7. The second argument is about the deficiencies in the inquiry process. The applicant has cited non-appearance of the Principal of A.N. College as a witness. This does not appear to be strong enough reason to invalidate the enquiry since another Professor of the same college had appeared and stood as a witness to prove that the applicant had secured lesser marks as per their records. Similarly, lack of tabulation register also cannot make the whole process wrong because there was otherwise sufficient evidence available to prove the complicity of the applicant in presenting a document carrying different marks than what he was shown to have secured by the documents kept in the college. The CBI's finding

(want of sufficient evidence) in this case can also not be treated as an evidence of complete exoneration of the applicant from his guilt. The CBI's final report (Annexure A/6) gives details of rubbing, tampering and removal of concerned pages. The reason why the CBI did not choose to further pursue this case for criminal prosecution is because of requirement of higher standards of proof for such criminal prosecution which cannot be said to apply on a departmental proceeding. Since the Enquiry Report and the orders of the Disciplinary and the Appellate Authority, are all detailed and reasoned orders, which have been passed after giving ample opportunity to the applicant to defend himself, we do not see any reason to interfere with these findings and with the punishment imposed. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member